

94TH CONGRESS
1st Session

SENATE

LEGISLATIVE COUNSEL
FILE COPY
NO. 94-97

VIETNAM HUMANITARIAN ASSISTANCE AND EVACUATION ACT OF 1975

APRIL 25 (legislative day, APRIL 21), 1975.—Ordered to be printed

Mr. SPARKMAN, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 6096]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6096) to authorize funds for humanitarian assistance and evacuation programs in Vietnam and to clarify restrictions on the availability of funds for the use of United States Armed Forces in Indochina, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Vietnam Humanitarian Assistance and Evacuation Act of 1975".

Sec. 2. Funds hereafter made available under section 36 of the Foreign Assistance Act of 1974 may be used on such terms and conditions as the President may deem appropriate for humanitarian assistance to and evacuation programs from South Vietnam without regard to the provisions of section 36(a)(1), section 36(a)(6), section 38(a)(1), or the third sentence of section 37(b) of such Act and notwithstanding any other provision of law.

Sec. 3. (a) It is traditional for the American people to be generous and compassionate in helping the victims of foreign conflicts and disasters. In keeping with that tradition it shall be the policy of the United States to provide humanitarian assistance to help relieve the suffering of refugees and other needy people who are victims of the conflict in South Vietnam.

(b) Notwithstanding any other provision of law, in addition to amounts made available under section 2 of this Act, and in addition to those amounts otherwise available for assistance to South Vietnam, there are authorized to be appropriated to the President for the fiscal

38-010 O

year 1975, to remain available until expended, \$150,000,000, under such terms and conditions as he may determine, to provide humanitarian assistance to refugees and other needy people who are victims of the conflict in South Vietnam.

(c) To insure that the humanitarian assistance provided under this section is provided to refugees and other needy people who are victims of the conflict in South Vietnam, such assistance shall be provided, to the extent feasible, under the direction and control of international organizations or under the auspices of voluntary relief agencies. To the extent that such assistance is so provided, it may be furnished only under the direct supervision and control of representatives of such organizations or agencies.

(d) Not less than ninety days after the date of enactment of this Act and not later than the end of each ninety-day period thereafter, the President shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a report with respect to humanitarian assistance provided under this Act describing fully and completely—

- (1) the amount of each type of humanitarian assistance;
- (2) the expected recipients of such assistance;
- (3) the names of all organizations and agencies involved in the distribution of such assistance; and
- (4) the means with which such distribution is carried out.

SEC. 4. (a) If the President determines that the use of United States Armed Forces is necessary to evacuate citizens of the United States and their dependents from South Vietnam, the President may, in accordance with the provisions of subsection (b), use such Armed Forces in a number and manner essential to and directly connected with the protection of such United States citizens and their dependents while they are being evacuated. In the event that such evacuation cannot be accomplished without involving such Armed Forces in hostilities or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, such evacuation shall, if feasible, be accomplished in a single operation. Other than the minimum number of personnel determined by the President to be essential to carry on critical functions of the United States mission or to carry out such evacuation, all such citizens who are employed by, or in the service of, the United States, and all such dependents, shall be evacuated as rapidly as possible after the date of enactment of this Act.

(b) If the President uses the United States Armed Forces for the purposes stated in subsection (a) of this section, he shall submit a report on the use of those forces as required by section 4(a) of the War Powers Resolution (including the certification required under subsection (c) of this section) and shall comply with all other provisions of that resolution.

(c) In addition to the information required under section 4(a) of the War Powers Resolution, the President shall also certify pursuant to subsection (b) of that section that—

- (1) there existed a direct and imminent threat to the lives of such citizens and their dependents; and
- (2) every effort was made to terminate the threat to such citizens and their dependents by the use of diplomatic and any other means available other than use of the Armed Forces; and

S.R. 97

(3) other than such essential personnel, such citizens and their dependents are being evacuated as rapidly as possible.

SEC. 5. In carrying out the withdrawal of such United States citizens and their dependents from South Vietnam pursuant to section 4 of this Act, the President is authorized to use the United States Armed Forces to assist in bringing out—

- (1) dependents of permanent residents of the United States;
- (2) Vietnamese nationals eligible for immigration to the United States by reason of their family relationship to citizens of the United States; and
- (3) other foreign nationals to whose lives a direct and imminent threat exists;

if he determines and certifies in writing to the Congress pursuant to section 4(b) of the War Powers Resolution that—

(A) every effort has been made to terminate the threat to such persons by the use of diplomatic and any other means available other than the use of the Armed Forces; and

(B) the number of such United States Armed Forces will not be required beyond those essential to and directly connected with the evacuation of citizens of the United States and their dependents; and

(C) the duration of the use of such United States Armed Forces to hostilities will not thereby be extended; and

(D) such evacuation will be confined to areas where United States forces are present for the purpose of protecting citizens of the United States and their dependents while they are being evacuated.

SEC. 6. The authority contained in this Act is intended to constitute specific statutory authorization within the meaning of section 8(a) of the War Powers Resolution but shall not be considered specific statutory authorization for purposes of sections 5 (b) and (c) of the War Powers Resolution.

SEC. 7. Nothing contained in section 839 of Public Law 93-437, section 30 of Public Law 93-189, section 806 of Public Law 93-155, section 13 of Public Law 93-126, section 108 of Public Law 93-52, or any other comparable provision of law shall be construed as limiting the availability of funds for the use of the Armed Forces of the United States for the evacuation programs authorized by this Act.

SEC. 8. (a) The President shall transmit each day to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a report setting forth fully and completely—

(1) the number of citizens of the United States and their dependents who left Vietnam the previous day, including the number of Embassy personnel and private contract personnel among such persons;

(2) the number of such persons remaining in South Vietnam; and

(3) the number of Vietnamese nationals who left South Vietnam the previous day with the assistance of the United States.

(b) Such reports shall be transmitted until such date as the Speaker of the House of Representatives and such committee may direct. The information may be submitted on a confidential basis if the President deems it advisable.

SEC. 9. Not more than four days after the date of enactment of this Act, the President shall transmit to the Speaker of the House of Representatives and the chairmen and ranking minority members of the Committees on Foreign Relations, Judiciary, and Armed Services of the Senate a report describing his general plan for the evacuation from Vietnam of the persons described in sections 4 and 5 of this Act.

SEC. 10. It is the sense of the Congress that as the humanitarian aid provided under this Act is made available in South Vietnam, the President is requested to use all appropriate diplomatic means at his disposal to obtain (1) an updated accounting of Americans listed as missing in action in Southeast Asia, and (2) the return of the remains of known American dead. The President is further requested to report to the Congress within 30 days after aid is made available in Southeast Asia, the diplomatic actions being taken.

SEC. 11. No funds authorized in this Act shall be used, directly or indirectly, to aid the Democratic Republic of Vietnam (DRV) or the Provisional Revolutionary Government (PRG) nor shall any funds authorized under this Act be channeled through or administered by the DRV or the PRG.

And the Senate agree to the same.

JOHN SPARKMAN,
FRANK CHURCH,
HUBERT H. HUMPHREY,
CLIFFORD P. CASE,
J. JAVITS,
HUGH SCOTT,

Managers on the Part of the Senate.

THOMAS E. MORGAN,
CLEMENT J. ZABLOCKI,
WAYNE L. HAYS,
L. H. FOUNTAIN,
DANTE FASCELL,
WM. BROOMFIELD,
EDWARD J. DERWINSKI,

Managers on the Part of the House.

S.R. 97

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H.R. 6096, the Vietnam Humanitarian Assistance and Evacuation Act of 1975, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Committee of Conference recommends that the House recede from its disagreement to the amendment of the Senate to the text of the bill with an amendment which is a substitute for both the text of the House bill and the Senate amendment thereto.

Except for clarifying, clerical, and necessary conforming changes, the differences between the two Houses and the adjustments made in the committee of conference are noted below.

SHORT TITLE

The House bill contained a short title which cited the Act as the "Vietnam Humanitarian Assistance and Evacuation Act of 1975".

The Senate amendment contained a short title which cited the Act as the "Vietnam Contingency Act of 1975".

The Senate receded.

FUNDING AUTHORIZATION

The House bill authorized the appropriation of \$150 million for fiscal year 1975 for humanitarian assistance to and evacuation programs from South Vietnam. The House version also authorized the use of Indochina economic aid funds previously authorized under the Foreign Assistance Act of 1974, for humanitarian purposes without regard to the restrictions of sections 36(a)(1), 36(a)(6), 37(b) (third sentence) and 38(a)(1).

The Senate amendment authorized the appropriation of \$100 million for fiscal year 1975 for humanitarian and withdrawal purposes and waived all the provisions of sections 36 and 38.

In addition the Senate version established a policy to provide humanitarian aid for war victims throughout all of South Vietnam and Cambodia, to be provided through channels acceptable to all parties; and authorized the appropriation of \$150 million for fiscal year 1975 for humanitarian assistance to refugees and other victims of the conflicts in South Vietnam and Cambodia, to be furnished under the direction and control of the UN or under the auspices of other international organizations, international agreements, or voluntary agencies, to be distributed only under the direct supervision and control of representatives of such organizations and agencies.

The Senate amendment also required the President to report to the Congress every 90 days (A) the amount of each type of economic assistance provided under the bill, (B) the expected recipients, (C) the distributing agencies, and (D) the means of distribution.

The committee of conference agreed to authorize the use of Indochina economic aid funds previously authorized under the Foreign Assistance Act of 1974, but not yet appropriated, for humanitarian assistance to, and evacuation programs from, South Vietnam without regard to the funding limitations set in Section 36(a)(1), sections 36(a)(6), section 38(a)(1), or the third sentence of section 37(b) of such Act.

The committee of conference also agreed to a new authorization of appropriations of \$150 million for humanitarian assistance in South Vietnam. It is the intent of the committee of conference that funds made available under this section be available to administer these humanitarian programs for victims of the conflict, wherever they may be located.

It is the intention of the conference that such programs be carried out under the direction and control of international organizations and voluntary relief agencies, located in the United States and abroad, to the extent feasible. In order to insure that assistance so provided is actually delivered to refugees and others in need, the section requires that the assistance only be furnished under the direct supervision and control of representatives of the international organizations and voluntary agencies. The Conferees expect the Executive Branch to make every reasonable effort to involve these organizations and agencies in this humanitarian effort. Finally, the section requires quarterly reports to the Congress which would describe the amount and nature of the assistance provided by the Act, the expected recipients, the organizations and agencies involved in the distribution of the assistance, and the means by which the assistance is distributed. This reporting requirement should not be construed to require the imposition of additional U.S. Government inspections and audits on the distributing agencies and organizations, if such requirements would substantially impede or diminish the involvement of these agencies and organizations in the programs authorized by this section.

The Conferees have deleted the provisions in the Senate bill authorizing humanitarian assistance to refugees and war victims in Cambodia and a provision relative to Public Law 480 food assistance to Cambodia solely because the retention of these provisions of the Senate version would have subjected the Conference report to a point of order under the House rules. The managers of both the House and Senate are aware that under existing law food assistance for humanitarian purposes can be supplied to needy people in Cambodia and urge that Executive Branch officials give continuing consideration to requests for food and other assistance from international organizations and voluntary relief agencies to the extent such assistance may be provided under existing law. As to Cambodian refugees who have fled from Cambodia, the Conferees expect that the United States will provide appropriate assistance to those refugees through international organizations and voluntary agencies through whatever authority and funds that are available for such purposes, including the Migration and Refugee Assistance Act.

S.R. 97

There is no funding authorization in this Act for military assistance programs in South Vietnam.

AUTHORIZATION OF USE OF UNITED STATES ARMED FORCES FOR EVACUATION PROGRAMS IN VIETNAM

The House bill had no express authorization for the use of United States Armed Forces but defined "evacuation" as one "without the use of military force, if possible, but should it become necessary and essential, with the minimum use of necessary force" to remove the categories described in the House bill.

The Senate amendment authorized the President to use United States Armed Forces to assist in withdrawing Americans and their dependents and endangered foreign nationals, and placed limitations on the use of those forces. If feasible, a single operation was required where imminent involvement in hostilities was indicated.

The House receded. It is the intention of the Committee of Conference that references in the conference report to the use of the United States Armed Forces are not intended to relate to the normal logistics and related services which may be performed by the Department of Defense, using military personnel in a non-combat situation, on a reimbursable basis under the Foreign Assistance Act and other laws.

REPORTING REQUIREMENTS REGARDING USE OF ARMED FORCES IN CONNECTION WITH EVACUATION OF AMERICANS AND THEIR DEPENDENTS

The House bill did not refer to the provisions of section 4 of the War Powers Resolution which require that the President submit reports to the Congress in connection with the introduction of U.S. combat forces into a foreign country or the introduction of forces into a situation involving actual or imminent hostilities.

The Senate amendment required that if it is essential to employ the Armed Forces in withdrawal operations, a report be filed as required by Section 4 of the War Powers Resolution, and that that report certifies:

1. That a direct and imminent threat exists to the lives of U.S. citizens and their dependents;
2. That every effort was made to terminate the threat by means other than the use of forces; and
3. That, with the exception of essential personnel, such citizens and their dependents are being evacuated as rapidly as possible.

The House receded.

EVACUATION OF FOREIGN NATIONALS

The House bill authorized the use of minimum necessary force to evacuate, in addition to American citizens, their dependents, Vietnamese nationals eligible for immigration to the United States by reasons of their relationships to American citizens, and other foreign nationals "to whose lives a direct and imminent threat exists". Military force employed for this last purpose may not exceed that necessary to carry out the evacuation of the three categories of persons. The House bill also stipulated that the authority with respect to the last

category does not extend to any action or conduct not essential to effectuate and protect the evacuation of the persons referred to above.

The Senate Amendment authorized the President to use Armed Forces to assist in bringing out endangered foreign nationals if he certifies, pursuant to section 4(b) of the War Powers Resolution, that:

1. Every effort has been made to terminate the threat by other than military force;
2. A direct and imminent threat exists to the lives of such individuals;
3. The number of American forces used to evacuate foreign nationals will not be greater than those essential to and directly connected with a withdrawal of American citizens;
4. The duration of the use of such forces will not be extended; and
5. The withdrawal will be confined to areas where U.S. Forces are present for the purpose of protecting Americans while they are being withdrawn.

The conference report adopts the authorities and restrictions provided in the Senate version but adopts the definition of foreign nationals eligible for evacuation under the Act which was part of the House version.

WAR POWERS RESOLUTION

The difference

The House bill stated that nothing in this Act is to be construed in derogation of the War Powers Resolution or to constitute a specific authorization for the use of Armed Forces within the meaning of sections 5 (b) and (c) of such Resolution.

The Senate amendment stated that the authority of this Act is intended to constitute specific authorization within the meaning of section 8(a) of the War Powers Resolution and is not a specific authorization for the purpose of section 5(c) of such Resolution, and required the removal of such forces by concurrent resolution if Congress directs.

The conference report provides that the authority contained in the Act is intended to constitute specific statutory authorization within the meaning of section 8(a) of the War Powers Resolution but shall not be considered specific statutory authorization for the purposes of sections 5 (b) and (c) of the War Powers Resolution. This reference incorporates the time limitations and termination procedure of section 5(b) of the War Powers Resolution and requires that such forces be removed by the President if the Congress so directs by concurrent resolution under section 5(c) of the Resolution.

WAIVER OF PROHIBITIONS ON THE USE OF FUNDS FOR THE USE OF U.S. FORCES IN EVACUATION

The House bill waived prohibitions on the use of funds for combat activities in Vietnam, in 5 public laws, section 839 of Public Law 93-437, section 30 of Public Law 93-189, section 806 of Public Law 93-155, section 13 of Public Law 93-126, section 108 of Public Law 93-52 and the precautionary phrase, "or any other comparable provision of law" to the extent necessary for the evacuation programs authorized in that bill.

S.R. 97

The Senate amendment waived the same five prohibitions, plus section 741 of Public Law 93-238, and section 307 of Public Law 93-50, "only to the extent necessary" to use U.S. armed forces to withdraw U.S. citizens and their dependents from South Vietnam. The Senate amendment did not contain the precautionary phrase "or any other comparable provision of law."

The Senate receded.

DAILY WITHDRAWAL REPORT

The House bill contained no provision requiring a daily withdrawal report.

The Senate amendment required a daily report to the Speaker and to the Senate Committee on Foreign Relations, as long as the recipients desire such reports, on the numbers of Americans and dependents who left Vietnam the previous day, broken down by government and private contract personnel. The number remaining in South Vietnam, and the number of South Vietnamese who left South Vietnam the previous day with U.S. assistance.

The House receded.

WITHDRAWAL PLAN

The Senate amendment required the President to submit, within 48 hours of enactment, a report to the Speaker and to the Chairman and ranking minority members of Senate Foreign Relations, Judiciary and Armed Services Committees a report describing his general plan for withdrawal of U.S. citizens and their dependents and for withdrawal of endangered foreign nationals.

The House bill contained no provision requiring the submission to the Congress of a withdrawal plan.

The House receded, with an amendment extending the time period within which a report is required from 48 hours to 4 days.

MISSING IN ACTION REPORT

The House bill contained a sense of the Congress provision requesting that, as humanitarian assistance is being made available to South Vietnam, the President use all appropriate diplomatic means to obtain:

1. An updated accounting of Americans missing in action; and
2. The return of the remains of known American dead.

The House bill further requests that within 30 days after aid is made available in Southeast Asia, the President report to the Congress the diplomatic actions being taken.

The Senate amendment contained no comparable provision.

The Senate receded.

PROHIBITION ON ASSISTANCE

The House bill prohibited the use of funds authorized in this Act to aid, directly or indirectly, the Democratic Republic of Vietnam (DRV) or the Provisional Revolutionary Government (PRG) or the channeling or administration of funds by the DRV or the PRG.

The Senate amendment contained no comparable provision.

S.R. 97

The Senate receded, with an understanding that the provision is not intended to prohibit assistance to refugees and other needy people who are victims of the conflict located in the territories controlled by these entities, if such assistance is channeled through and directly administered by international organizations or private voluntary agencies, and public facilities (for transportation, etc.) are only used in a manner that is similar to the common practice of these agencies and organizations in noncommunist territories.

EVACUATION OF DESERTERS FROM THE U.S. MILITARY

The House bill contained no provision relating to the evacuation of deserters from the U.S. military.

The Senate amendment contained a provision which expressed the sense of Congress that the United States not abandon in Vietnam deserters from the U.S. military who remain in that country, but that upon their return to the United States they be turned over to proper authorities for prosecution in accordance with the law.

The Senate receded, with the understanding that the provision would have been subject to a point of order in the House.

RESCISSION OF PROVISIONS THROUGH CONCURRENT RESOLUTION

The House bill provided that any provisions of the bill may be rescinded by the Congress through concurrent resolution.

The Senate amendment contained no comparable provision.

The House receded, because the Committee of conference believed that the safeguards contained in section 5, concerning the War Powers Resolution, made the provision unnecessary.

DELIVERY OF PUBLIC LAW 480 SHIPMENTS TO CAMBODIA

The House bill did not contain a provision relating to delivery of Public Law 480 shipments to Cambodia.

The Senate amendment required Public Law 480 food shipments scheduled for delivery to Cambodia on or before the date of enactment of this bill to be delivered to Cambodia through international channels, provided that the assistance is requested by the Cambodian Government.

The Senate receded.

FINDING OF CONGRESS ON NORTH VIETNAMESE AND VIETCONG VIOLATION OF PARIS PEACE AGREEMENT

The House bill stated the finding of the Congress that this bill is made necessary by North Vietnamese and Vietcong military aggression in flagrant violation of the Paris Peace Agreement.

The Senate amendment contained no comparable provision.

The House receded. The committee of conference believes that a formal assessment of blame could have undesirable consequences with respect to the overall objectives of the Act and, specifically, with respect

to obtaining information about Americans listed as missing in action in Southeast Asia and the return of the remains of known American dead.

JOHN SPARKMAN,
FRANK CHURCH,
HUBERT H. HUMPHREY,
CLIFFORD P. CASE,
J. K. JAVITS,
HUGH SCOTT,

Manager on the Part of the Senate.

THOMAS E. MORGAN,
CLEMENT J. ZABLOCKI,
WAYNE L. HAYS,
L. H. FOUNTAIN,
DANTE FASCELL,
WM. BROOMFIELD,
EDWARD J. DERWINSKI,

Managers on the Part of the Senate.

